

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	FCC 03J-1
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

I. Introduction

The Nebraska Rural Independent Companies (the “Nebraska Companies”)¹ by their attorneys respectfully submit their comments in the above-captioned proceeding. On November 8, 2002, the Federal Communications Commission (“Commission”) requested that the Federal-State Joint Board on Universal Service (“Joint Board”) “review certain of the Commission’s rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.”² Specifically, the Commission asked the Joint Board to review the Commission’s rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (“ETC”) is providing services, as well as the Commission’s rules regarding support for second lines. The Commission also asked the Joint Board to examine the process for designating ETCs. On February 7, 2003 the Joint Board issued a Public Notice in order to initiate its

¹ Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002).

review.³ In that Public Notice, the Joint Board invited public comment on whether these rules continue to fulfill their intended purpose, whether modifications are warranted, and if so, how the rules should be modified. The Nebraska Companies appreciate the opportunity to participate in the Joint Board's review and the process of the Joint Board recommendation to the Commission.

II. State of the Marketplace

The Joint Board seeks to establish a complete record on the development of competition in high-cost areas, the effect of the Commission's current policies on such development, and how line growth in high-cost areas may impact the universal service fund.⁴

The Joint Board makes the following inquiries: To what extent will support for competitive ETCs likely grow over time? Is the growth rate of support for competitive ETCs over the last eighteen months indicative of what one would expect to see in the future? How does the growth in support for competitive ETCs compare to the growth in support for other ETCs?⁵

Significant changes have occurred since the passage of the 1996 Act, most notably the rapid rise of wireless revenues and subscribers.

The state of the telecommunications marketplace has changed dramatically over the past seven years since the passage of the 1996 Act. The following major trends have emerged:

- Explosive growth in wireless revenues and subscribers,
- Leveling and the beginning of decline in ILEC revenues and lines, and

³ See *Public Notice, Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 ("Notice") (rel. Feb. 7, 2003).

⁴ Id. at para. 9.

⁵ Id. at para. 11.

- Significant declines in long distance revenues.

The following chart clearly demonstrates the trends in industry revenues:

	(\$ Billions)						
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
ILECs	\$107.9	\$105.2	\$108.2	\$112.2	\$116.2	\$117.9	\$109.5
Wireless	\$25.9	\$33.0	\$37.0	\$50.2	\$63.3	\$74.6	\$84.0
IXCs	\$86.9	\$89.6	\$96.0	\$98.4	\$101.4	\$93.7	\$82.2

Source: FCC's Telecommunications Industry Revenues, March 2003, Table 3

The growth in the wireless market is particularly striking when viewed as the number of lines served:

	Lines/Subscribers (Millions)						
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
ILECs¹	n/a	n/a	n/a	187.3	188.3	185.5	179.5
Wireless²	44.0	55.3	69.2	86.0	109.5	128.4	140.8

1. Source: FCC's Local Competition Report (no data prior to 1999)

2. Source: FCC's 7th Annual Report on CMRS Competition

There are likely a number of factors that account for the rapid growth of the wireless market. Undoubtedly, there are significant consumer benefits that result from advances in wireless technology and the benefits of mobile communications. The growth of the wireless sector has also been enhanced by deliberate public policy advantages that have been provided to wireless carriers. These include freedom from local regulation, and even more important, freedom from the payment of charges to originate and terminate their calls on local telephone networks, thus encouraging arbitrage. It is this latter advantage that has allowed wireless providers to bundle wide calling areas and what many perceive to be “free” long distance service into their packaged offerings, contributing to pricing pressure on long distance while eluding profitability. This, in turn, has resulted in significant growth in the number of wireless subscribers, as well as dramatic decreases in the revenues of long distance carriers.

The universal service fund has also grown dramatically over this time period -- from \$1.7 billion in 1996 to \$6.3 billion today. Two major catalysts have driven this growth:

- Introduction of the Schools and Libraries and Rural Health Care funds (\$2.3 billion)

- The movement of over \$1 billion in cost-based access charges in to portable support mechanisms.

In addition, the low-income fund has grown by \$0.6 billion due to increasing awareness of Lifeline and Link Up programs and the introduction of targeted Tribal funds for low-income consumers living on reservations. Support to the ILEC industry has also grown by \$0.7 billion due to general industry growth, and the lifting of caps that had been in place since 1993 as a result of the RTF recommendation.

The combined impact of the significant increases in the overall fund size, in addition to the declines in the interstate end user revenue base, have caused the assessment paid by consumers to increase toward politically unsustainable levels. From the third quarter of 2002 through the first quarter of 2003, the Commission was able to keep the assessment at the same 7.3 percent level by “borrowing” over \$1 billion in unspent Schools and Libraries funds. Beginning in the second quarter of 2003 this assessment will increase to 9.1 percent. In recent testimony before the Senate Subcommittee on Communications, it was projected that if current trends continue, this percentage would increase to 12.8 percent by 2006.⁶

Under current rules, portability of support, particularly to wireless carriers, poses significant threats to the sustainability of the universal service fund

Two factors promise to add dramatically to the size of the universal service fund if appropriate regulatory actions are not taken:

- Portability of support to competitive ETCs based on the incumbent’s cost
- Increased funding liabilities that could be created if current intercarrier compensation mechanisms are inappropriately replaced by a bill and keep paradigm being advocated by special interests within the industry.

⁶ See testimony of Joel E. Lubin, Vice President Federal Government Affairs, AT&T Corp., before the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation, April 2, 2003.

While intercarrier compensation is not a subject of this proceeding, it is important for the Joint Board and the Commission to keep in mind that what federal and state regulators do in coming proceedings on intercarrier compensation will have a significant impact, positive or negative, on the sustainability of the universal service fund. As the record from the Commission's 2001 intercarrier compensation proceeding clearly shows, adoption of a bill and keep framework for intercarrier compensation will place even more significant upward pressure on the size of the fund.⁷ Thus, the overall goals of universal service will be materially aided by state and federal regulators adopting intercarrier plans that allow rural carriers to make appropriate charges for the use of their network by others.

Portability of support to competitive ETCs, at least under current rules and procedures, is one of the more serious challenges facing the fund. Absent significant change, the current process for funding competitive ETCs could ultimately push the fund to insolvency. In the face of that looming crisis, the Nebraska Companies propose later in these comments a revised funding mechanism for wireless carriers and other alternative technologies that will avoid many of the problems of the current process, and will assist in achieving clearly defined policy goals. In the opinion of the Nebraska Companies, it ultimately is not the concept of portability that should be the critical question, but rather what amount of support should be portable to carriers employing different technologies and fulfilling different public policy goals.

⁷ Comments filed in CC Docket No. 01-92 on August 21, 2001. See, for example – Regulatory Commission of Alaska (a bill and keep system would likely raise rates in rural Alaska to excessive and unreasonable levels), Alaska Telephone Association (bill and keep would shift more than \$60 per month to the end user), OPASTCO (a bill and keep regime would make it more difficult to preserve and advance universal service), NTCA (with bill and keep the average end user increase would be \$20, and in study areas with less than 500 lines it would be \$69), Oklahoma Rural Telephone Coalition (the average increase would be \$62 - \$30 federal, \$32 state).

In proportion to the overall size of the fund, the \$147 million⁸ in current annualized payments to competitive ETCs, predominantly wireless carriers, indeed seems small. However, the true cause for alarm is the likelihood that if current trends continue, this funding could grow to well over \$2 billion per year. Under the current process, wireless carriers are easily attaining ETC status, with unfettered competition serving as the standard for public interest determinations by the FCC and most states. The current \$147 million is the result of a handful of ETC decisions made at both the state and federal level involving smaller regional wireless players. The ease with which these applications have been granted, as well as the significant sums involved, has not escaped the attention of Wall Street.⁹ Indeed, coupled by hard financial times for telecom in general, pressure from the “Street,” and the apparent ease with which ETC applications are being granted, we are beginning to see the large nationwide wireless networks lining up to receive universal service support. Recent applications by Nextel and ALLTEL portend a dramatic, unsustainable and unnecessary increase in the size of the universal service fund.¹⁰

The \$2 billion estimated impact of nationwide wireless ETC designations is a conservative estimate of the size of the wireless ETC impact, and is based upon the assumption that wireless carriers will merely maintain their current market penetration rates in areas that they currently serve. Wireless carriers have a different cost structure than wireline carriers, and

⁸ See *Federal Universal Service Support Mechanisms Fund Size Projections For the Second Quarter 2003*, Universal Service Administrative Company (rel. Jan. 31, 2003) at Appendix HC01.

⁹ See *Notice* at footnote 43. The Joint Board referenced an analyst report by Solomon Smith Barney that that indicates that universal service funding is an additional revenue source that is “almost all margin”.

¹⁰ See *The Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934*, CC Docket No. 96-45, Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Alabama (filed Apr. 14, 2003) and Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Virginia (filed Apr. 14, 2003), and *Federal-State Joint Board on Universal Service*, NPCR, INC. d/b/a NEXTEL PARTNERS, Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed Apr. 3, 2003).

compensating them on the same basis as a wireline carrier can create perverse incentives that could cause the ultimate impact on the fund to grow well beyond the \$2 billion level. For example, USF payments are made on the incumbent carriers cost per line since much of the cost of a wireline network is in the cables that connect homes and places of business to the network. Most of the cost of a wireless network, however, is in the towers and associated radio equipment, and not on the basis of “lines”. Indeed, wireless carriers don’t have lines – they have subscribers. Also, their network costs are not sensitive to subscribers – they are sensitive to minutes of use and tower coverage. Wireless carriers have offerings that provide multiple phones to customers who can use a common “bucket” of minutes. Such an offering does not materially increase the wireless carrier’s cost structure, but could dramatically increase the draw from the fund if actively promoted in areas with high per-line support amounts.

The Joint Board asks what economic and business factors affect competitive entry in rural and high cost areas and to what extent, if any, is there a relationship between competitive entry and receipt of high-cost support by competitive ETCs.¹¹ The risk for the fund increasing well beyond the projected \$2 billion is exacerbated by the fact that a large percentage of the high-cost fund is concentrated in a relatively small percentage of the total lines nationwide. Using data from the second quarter of 2003 USAC report, 25 percent of the high-cost fund, or approximately \$800 million per year, goes to seven tenths of one percent (0.7 percent) of the ILEC lines. These represent the most remote and high-cost areas of the nation, where customers and the companies that serve them depend upon high cost support to have access to affordable basis telephone service. The following table shows how a relatively small percentage of the lines account for a significant portion of the fund:

¹¹ See *Notice* at para.12.

<u>Percentage of High-Cost Support</u>	<u>Percentage of Lines</u>
25%	0.7%
50%	2.3%
75%	6.7%
100%	100.0%

As this data clearly shows, a wireless carrier making a targeted multi-phone promotion to a relatively small number of customers living in high-cost areas could significantly increase the size of the fund, for questionable public benefit. . For example, if half of the customers in the top quartile of fund recipients, or approximately 600,000 households, could be convinced to take one additional cell phone on their account, this would add approximately \$400 million per year to the fund. If these same 600,000 households were provided with four cell phones for their account, roughly one for each family member, then the fund would increase by an additional \$1.2 billion per year. This clearly illustrates why some modification of the wireless portability rules will be necessary if the high-cost fund is to continue to be sustainable and meet its intended objectives.

While wireless and wireline networks have different cost structures and cost drivers, they do share one common trait -- they are both high fixed-cost businesses. That is, they both require significant in the infrastructure that often doesn't vary directly with the number of lines or subscribers that are actually served. For the wireless carrier this investment is in the tower and radio facilities, and in the network that connects these towers to the switch. For the wireline carrier this investment is in the local loop category. In his separate statement issued with the MAG Order, Commissioner Kevin Martin made the following observation on funding multiple network providers in sparsely populated rural areas:

I also note that I have some concerns with the Commission's policy – adopted long before this Order – of using universal service support as a means of creating “competition” in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may

make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.¹²

While Commissioner Martin's hypothesis has often been debated in the context of whether to support both a wireline carrier and a wireless carrier in the same market, the same economic dilemma is created when two or more wireless carriers seek support for serving the same sparsely populated rural market. Virtually all areas of the nation, including most rural areas, are served by multiple wireless providers. Indeed, the \$2 billion projected annual impact of designating all wireless carriers as ETCs is as large as it is in part because of multiple wireless providers in virtually all markets. However the problem identified by Commissioner Martin -- that supporting multiple carriers in sparsely populated areas could lead to "uneconomic investment and a ballooning universal service fund" -- also applies when funding multiple wireless providers in the same sparsely populated market. When one wireless provider receives universal service support, it may well be able to serve an entire rural area and be economically viable. As additional wireless providers receive support for investment in the same sparsely populated market, however, the customer base is divided, support requirements increase, and no carrier may be economically viable.

For most consumers, wireline and wireless services are complements, not substitutes

The Joint Board also inquires as to what extent does wireless or other technology represent the addition of a complementary service rather than substitution for traditional wireline

¹² *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket Nos. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256 and Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (rel. November 8, 2001), *Separate Statement of Commissioner Kevin J. Martin*.

service, and notes that the Commission's most recent Telephone Subscribership in the United States report, as of November 2001, indicates that 1.2 percent of households in the United States indicated that they had only wireless phones.¹³ The fact that 1.2 percent of households in the United States have *only* wireless phones is, in and of itself, a strong indication that wireless service is not a substitute for wireline service for most consumers. Western Wireless, a wireless carrier, indicates in a recent filing that "[a] large number of consumers use both wireline and wireless. . . ." and that is because consumers use wireless service ". . . as a complement to wireline."¹⁴ Western Wireless has cited the benefits to consumers of wireless services such as expanded local calling areas and wireless calling plans that may reduce toll charges.¹⁵ Wireline services, on the other hand, offer capabilities that are not generally available from wireless service providers, for example, broadband access to the Internet. Because of the underlying technology platform, wireline service providers can also offer unlimited usage local service for a flat fee, a pricing plan that is advantageous to high-volume users who would likely pay a greater amount for a large volume of local calls using wireless service. Such pricing plans are advantageous to businesses, which typically experience large volumes of calling. Also, many residential users who access the Internet through dial-up connections benefit from flat fee pricing because of long call holding times during the connection. Because wireline service providers

¹³ See *Notice* at para. 14.

¹⁴ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, Comments of Western Wireless Corporation (filed Feb. 3, 2003) at p.23.

¹⁵ *Ibid.* See also *Federal-State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181, Memorandum Opinion and Order (Wireline Comp. Bur. rel. Nov. 27, 2002) ("RCC Designation Order") at para. 24.

offer services and pricing plans that are not generally available through wireless carriers, wireless and wireline services are not substitutes.

III. Methodology for Calculating Support in Competitive Study Areas

The Joint Board seeks comment regarding the methodology for calculating support for ETCs in competitive study areas.¹⁶ The issues that the Joint Board is seeking comment on with regard to a support calculation methodology that are addressed by the Nebraska Companies herein include: the policy goals of portable support; alternative methodologies for calculating support for competitive ETCs; whether and how auctions might be utilized to award support; and whether modifications are warranted with regard to the methodology for determining the location of a line served by a mobile wireless provider.

The Commission's current rules do not focus on the key aspects of universal service policy as laid down in the 1996 Act and until those rules are modified no additional ETC designations should be granted

The Joint Board asks if the current rules promote efficient competition in high cost areas.¹⁷ The question of efficient competition should not be the focus of universal service rules. Section 254 of the 1996 Act anticipates an evolving range of telecommunications services taking into account the advances in telecommunications and information technologies and services.¹⁸ Part 54.307¹⁹ of the Commission's current rules equates support for competitive ETCs (for competitive capture or new lines) to the per line support level of the incumbent LEC. This structure does not promote a diversity of complementary universal service providers and instead pre-determines that the market for universal services should be competitive and not

¹⁶ See Notice at para. 15.

¹⁷ Id. at para.16.

¹⁸ 47 U.S.C. § 254(C)(1).

¹⁹ 47 C.F.R. §54.307(a)(1,2).

differentiated. The Nebraska Companies believe that this is a critical incongruity with law and until the current rules are modified as a result of this proceeding, the Nebraska Companies recommend that further ETC designations are not made by either the FCC or state commissions. A continuation of the assault on scarce universal service funding by wireless carriers across the country that are already firmly established in their markets would only exacerbate the problems with the current support system that are clearly identified above. Meanwhile, the Nebraska Companies believe that the Commission should then seek in this proceeding to establish a holistic view of the public policy goals that it wants to accomplish in its universal service rules. In the process of doing so, any reformulated support mechanism should recognize the potential public benefit of sustaining a range of different universal service products – both wireline and wireless. It would then be appropriate that any outstanding ETC designations should be delayed and re-evaluated within the context of these new public policy goals.

The Commission's policies for the distribution of universal service support should be revised to recognize the different utilities provided by technology platforms providing complementary services

The Commission has heretofore incorrectly framed the issue as to whether multiple providers of universal service in a single support area constitute “competitors.” The Nebraska Companies assert that CMRS and wireline service are not substitutable for most customers. Thus, the reality of the market structure is that there are different carriers utilizing different technologies with different functionalities providing different utilities to their customers. Wireline carriers provide a level of utility characterized by high network availability, high overall transmission quality, security, and dedicated broadband transmission capability on a common platform. CMRS carriers provide a different level of utility through freedom of movement. Network availability and broadband limitations are sacrificed for this freedom of

movement because of the shared nature of the last mile of transmission. These trade-offs are inherent to the technology and the result is a fundamentally different functionality that is accepted by the consumer.

Universal service policy, as currently exercised by the Commission, fails to explicitly recognize the unique utility provided by different technologies. Instead, it appears to favor a market view where the carriers utilizing different technologies compete for not only the same customers in the provision of a generic service referred to as “universal service,” but also for the same pool of universal service funds. As this scenario plays out in rural high cost markets, the customer could ultimately be faced with one exclusive choice of technology and function and/or a general decline in service. A rural provider that loses or cannot gain access to universal service support will not continue to invest in the improvement or maintenance of its respective infrastructure in the highest cost areas. The latter environment represents no security for the kind of significant investments it takes to build and maintain network infrastructures. What is worse is that both providers will tend to exhibit this behavior in an attempt to stay solvent. Ultimately, one or more of the carriers would likely be forced to exit the market. Thus, we will have enforced a win-lose outcome not only for the providers but also for their customers in those markets.

In his testimony on universal service given to the Senate Committee on Commerce, Science and Transportation, Dr. William R. Gillis, former Chairman of the Rural Task Force, called for Congress to fundamentally rethink the approach that is currently being taken to universal service policy.²⁰ He suggests that policy makers need to think in terms of a universal service that provides “rural Americans with *all* the benefits of modern telecommunications

²⁰ See testimony of Dr. William R. Gillis, Director, Center to Bridge the Digital Divide, before the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation, April 2, 2003.

including a network capable of accessing broadband services, mobile wireless and basic voice telephone.” He goes on to say that this needs to be done in a responsible manner without unnecessarily exploding the size of the universal service fund. He suggests that assessing the broadest possible base is one of the key attributes of the solution. Dr. Gillis asserts that the universal service system established by the Commission is broken and cannot be relied upon to achieve the fundamental universal service obligations under the Act. He identifies the polar positions being presented in Commission hearing rooms. One side focused on expanding competitive options versus the other side concerned about the provision of quality and comparable services in high cost areas. He argues that this litigious conflict is in the way of regulatory policy reforms that could encourage access to multiple telecommunications options in both urban and rural markets.

In his Senate Testimony, Dr. Gillis states the following:

I would suggest reframing the issue in a different context. First I would observe *mobile wireless and traditional telecommunications are not for the most part competing services and have been inappropriately characterized as such.* With the exception of those cases where mobile wireless has resulted in the ability of customers to eliminate their traditional telecommunications connection, *we are discussing complementary services, both desired by consumers for different reasons.* (emphasis added)

Later in his testimony, he suggests alternative ways that a universal service system should be structured to achieve defined public objectives:

Focusing on the *goal* of eliminating current holes in the wireless network and dependable E-911 service in all locations, a distribution based on the number of cell phones supported by the carrier may not be appropriate. The costs incurred in meeting the objective are the construction of new towers and the electronic enhancements. *The current allocation system does not recognize the likely reality that adding new cell phone users only adds marginally to the cost of achieving the goal. An alternative basis of allocating subsidy supporting desired mobile wireless facility upgrades such as targeted grants or low-interest loans may be a more appropriate vehicle to achieve the desired end* than the current practice of awarding universal service to wireless carriers on a per connection basis creating a potentially unnecessary expansion to the federal fund. Other carefully targeted universal service options may also be possible. (emphasis added).

The Joint Board asks if the current rules have the effect of supporting the costs of two or more networks serving the same area concurrently, and, if such is the case, is that consistent with the purpose of section 254 of the Act.²¹ Dr. Gillis has provided what the Nebraska Companies believe to be an appropriate answer to these questions. While the Nebraska Companies believe there will be no consumer benefit to the artificial institution of competing carriers in many rural markets, there may be benefit to the funding of one complementary carrier in those markets. The Nebraska Companies have provided clear evidence that CMRS carriers and wireline carriers provide a different telecommunications service to high cost, low density markets. Therefore, it may be rational that some level of support should be available to those carriers deploying alternative technologies without diluting or removing support from incumbent carriers using wireline technology. In this manner one can guarantee that a variety of quality services at comparable rates will be available in those markets. The current Commission model for universal service will not provide for the robust and evolving service set or the level of quality that the 1996 Act requires in rural markets.²² The current rules pay support to two or more networks serving the same area concurrently, but do not differentiate support based on the different services that different types of networks may provide. It is significant to note, however, that section 254 of the Act does not state specifically what the level of support for any given carrier should be, only that it be “specific, predictable and sufficient”.²³ The current rules are

²¹ See *Notice* at para. 16.

²² See 47 U.S.C. § 254(c)(1) and § 254(b)(1).

²³ See 47 U.S.C. § 254(b)(5).

based upon previous Joint Board and FCC decisions that reasoned that “competitive neutrality” required that the monetary support to all carriers should be equal on a per-line basis.²⁴

As suggested by Dr. Gillis, the Nebraska Companies believe that supporting multiple networks in the high cost areas, when those networks provide different services with different functionalities, is consistent with the purpose of section 254 of the Act. However, as the Nebraska Companies discuss below, while it may be in the public interest for support to be provided for multiple networks in a single support area, if those networks provide different functionalities, the current methodology in which the support amount paid to the incumbent provider is also paid to competitive ETCs (“CETCs”) is inappropriate and will result in significant economic waste. It also could result in no single network being economically viable in some extremely high-cost parts of the nation.

Auctions are not the appropriate mechanism to encourage the provision of different services with different functionalities

The Joint Board seeks comment on whether and how auctions might be utilized to award support.²⁵ The Nebraska Companies do not believe that auctions are an appropriate mechanism to encourage the provision of different services with different functionalities as discussed above. The use of auctions implies that one ETC in a support area will receive universal service support and other ETCs will not. Such a system would not provide sufficient support in rural areas to sustain the provision of different services with different functionalities. As such, an auction system to award universal service support would not help fulfill the universal service principle contained in Section 254(b)(3) of the Telecommunications Act of 1996 (the “Act”), which codifies the notion that rural consumers should have access to telecommunications services that are reasonably comparable to the services provided in urban areas. Without universal service

²⁴ See 47 C.F.R. §54.307(a).

²⁵ See *Notice* at para. 20.

support for providers of different services in rural areas, one or more carriers may eventually exit the market, leaving the consumer in a given area with either wireline or wireless service, but not both.

The public interest will be best served by a universal service support system that focuses on defined and measurable public policy goals

In the interest of attempting to find a rational policy solution, the Nebraska Companies respectfully suggest that the cause of many of the problems and controversy that surrounds the current ETC and portability rules can be traced to what may be two fundamentally flawed assumptions:

1. “Competition” manifested by multiple service providers is the primary goal, and
2. Wireless service and wireline service are substitutes, and therefore competing services.

As discussed previously, wireline and wireless services, rather than being substitutes, are indeed complements, each valued by customers for different reasons. Viewing the issue in this light opens the possibility for a more rational way to look at the “public interest” issue – a more goal-oriented approach.²⁶

The current universal service fund had its origins in the public goal of achieving a ubiquitous wireline infrastructure. The current high-cost fund mechanism purports to support that goal, although recent developments make that questionable. Policy makers may now want to consider whether it is an equally valid goal to achieve a ubiquitous wireless infrastructure. If

²⁶ In earlier advocacy before the Joint Board, the Nebraska companies offered a proposal called the Public Policy Goals Plan (PPGP). While our proposal here is somewhat different and reflects evolution in our thinking, it is consistent with our earlier concept that the universal service mechanisms must be focused on the achievement of defined public goals.

so, they could develop funding mechanisms or support programs designed to achieve this additional goal and ensure that “specific, predictable and sufficient” funding is available.

Adopting a goal-oriented approach would help policy makers define the specific public interest outcomes they seek to create, and to develop support mechanisms to assure their achievement in high-cost rural areas where the competitive market would not otherwise deliver them. A goal-oriented approach to universal service distribution would greatly assist in implementing the public interest analysis, and would solve many of the perplexing problems that are currently being experienced.

Differences in funding levels should be based upon the unique cost drivers that affect differences in service levels and capabilities associated with alternative technologies.

The Joint Board asks if support should vary depending on an ETC’s technology platform.²⁷ The Joint Board also seeks comments on alternative methodologies for calculating support for competitive ETCs, for example, should the Commission calculate support for a competitive ETC based on its own costs?²⁸ As we will discuss in section V. of these comments, the Nebraska Companies recommend that a minimum set of quality of service standards be included in the definition of services to be supported by the federal universal service mechanism. These standards thus become threshold requirements for receiving Federal support. The Nebraska Companies also recommend that beyond the threshold requirements for receipt of support, the Joint Board should consider the level of service, the functionality of the service, and the quality of service above the minimum thresholds to be determinative of the amount of the support received for a subscription submitted to the federal universal service system. The Nebraska Companies discussed above the idea that different technologies present different levels

²⁷ See *Notice* at para. 17.

²⁸ *Id.* at para. 18.

of functionality and therefore different levels of utility. Those differences are a reflection of different levels of cost to produce the universal service. Generally, networks that are capable of supporting broadband transmission and have high network availability are more costly but also produce a higher utility than networks that have limited if any broadband capability and lower network availability. Technologies that have a shared local distribution medium, such as CMRS, provide mobility but trade off real broadband capability and network availability. As Dr. Gillis points out, a variety of functionality in modern communications systems provided in rural markets is in the public interest, but maintaining such variety does not require that unit support amounts should be equal for all ETCs. The current approach by which incumbent wireline costs of rural carriers are utilized as a basis for determining support for competitive ETCs in the markets of rural carriers should be replaced by a system that determines unit support levels based on the unique utility and level and quality of service provided. Service benchmarks should be established by the Commission in order to provide a metric for the distribution structure. Services that are fully compliant to the benchmarks would receive the maximum level of unit support while support levels would be discounted for those carriers that only partially attain those benchmark levels but continue to meet any threshold requirements.

Providing “per-line” funding based on a wireline provider’s cost to wireless carriers who have different technology and cost structure is an inefficient way to achieve wireless ubiquity, if indeed that is the goal. The key is in designing a funding mechanism that is based on the unique cost drivers that recognize differences in service levels and capabilities associated with wireless technology and allows for the expansion of service to un-served areas. The size of a targeted wireless fund could also be better managed if it were targeted toward the unique performance

characteristics (and associated cost drivers of the technology) and expansion of the service into high-cost rural areas where wireless coverage is not provided today.

The Nebraska Companies believe that such a goal oriented approach to addressing the universal service needs of multiple technologies offers a more realistic way of addressing the public interest issues that Congress wrote into the Act. The current funding environment is not rational, and risks the continued sustainability of the universal service mechanism that assures that all Americans have access to affordable and advanced telecommunications services. There is also no certainty that this process will achieve any defined public goal other than the amorphous goal of “competition.” A universal service regime that establishes valid public goals, and provides targeted funding based upon the unique characteristics and needs of multiple technologies, offers the best prospect for achieving the goals envisioned by Congress in the Act.

The current method of using billing address to determine the location of a line served by mobile wireless carriers should be replaced by a method that recognizes the actual service area of mobile subscription.

The Joint Board seeks comment regarding the methodology for determining the location of a line served by a mobile wireless provider, and whether modifications are warranted.²⁹ In the RTF Order, the Commission adopted the RTF recommendation that a wireless mobile carrier use a customer’s “location” as the basis for determining in which disaggregation zone a customer is located for purposes of receiving high-cost universal service support for service provided to that customer. The Commission found the billing address to be a reasonable surrogate to identify a mobile wireless customer’s location.³⁰ In reaching this determination the Commission

²⁹ Id. at para. 25.

³⁰ See *Federal-State Joint Board on Universal Service* CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interstate Carriers* CC Docket No. 00-256, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256* FCC 01-157 (“RTF Order”), at para.180.

acknowledged that the use of a wireless customer's location address could allow arbitrage of the universal service support mechanism. In its analysis the Commission considered the use of the Mobile Telecommunications Sourcing Act database which identifies the situs of customers' "place of primary use" for the purpose of state and local taxation.³¹ The Commission declined to impose the use of the Mobile Telecommunications Sourcing Act database at the time of the release of the RTF Order because the law did not require the states to implement the database until sometime after August 2001. The Commission concluded without the database such an imposition would unnecessarily increase the administrative burden of mobile wireless carriers.³²

The Nebraska Companies suggest that the potential for arbitrage has increased since the implementation of the MAG Order, which has increased the amount of support available to competitive ETCs. Therefore, the Nebraska Companies recommend that the Joint Board consider the use of the Mobile Telecommunications database in the determination of particular location for the service to which support is provided.

IV. Scope of Support

The Joint Board seeks comment on questions related to limiting support to primary lines, that is, a single connection to a subscriber's primary residence and to businesses with only a single connection. The issues that the Joint Board is seeking comment on with regard to limiting support to primary lines that are addressed by the Nebraska Companies herein include: would the goals of section 254 be better served if support were limited to a single connection; if support were limited to a single connection, how it be determined which line receives support; and to what extent would any proposed modifications affect the size of the universal service fund?

³¹ Id. at para.182.

³² Ibid.

Support should be provided for network infrastructures and therefore should be provided for all lines that meet ETC designation criteria.

The Joint Board seeks comment regarding whether the goals of section 254 would be better served if support were limited to a single connection to the residential or single-line business end-user—whether provided by the incumbent or a competitive ETC? The Joint Board asks if limiting support to primary lines would be consistent with the universal service principle stating that access in rural and high-cost areas should be “reasonably comparable” to urban areas.³³ The Nebraska Companies believe that the goals of section 254 could be unfulfilled if support were limited to a single connection to the residential or single-line business end-user—whether provided by the incumbent or a competitive ETC. The principles on which the Commission and the Joint Board should base policies for the preservation and advancement of universal service are prescribed in section 254(b).³⁴ Those policies must assure that quality services and access to advanced services be available to customers in rural and insular areas at rates that are reasonably comparable to the service in urban areas at reasonably comparable rates. The policies must also assure that support is specific, predictable, and sufficient.

Irrespective of the technology deployed, telecommunications networks are engineered to provide service to a serving area, not to a single subscription or a single customer. In the case of wireline service, after a new area of a community is platted, telephone feeder and distribution is

³³ See Notice at para. 28.

³⁴ 47 U.S.C. § 254(b) Universal Service Principles.-The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles: (1) Quality and Rates.-Quality services should be available at just, reasonable, and affordable rates. (2) Access to Advanced services.-Access to advanced telecommunications and information services should be provided in all regions of the Nation. (3) Access in Rural and High Cost Areas.-Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (5) Specific and Predictable Support Mechanisms.-There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.

engineered to serve the entire platted area with capacity for multiple communications paths to each residence or business. In the case of wireless service, the CMRS tower is positioned to serve the potential subscribers in the entire cell with radio capacity. Simply put, telecommunications carriers build networks not individual “lines” or communications paths. If a large number of those communications paths would not be eligible for support, then a carrier serving a rural market will be unlikely to build the network capacity required to meet the total demand, because that the carrier must price non-primary line service in a manner that is not affordable. Similarly, if a carrier has already built a network based upon the past assurance that universal service would provide sufficient support, reducing support to only lines that have been deemed “primary” through some yet unknown process could jeopardize that carrier’s ability to continue serving customers.

The Joint Board asks for comment on how a primary line restriction would affect the implementation of federal support mechanisms based on embedded or forward looking cost. The Joint Board also asks for comment on what the impact would be of primary line restrictions on consumers, ETCs, and an ETC’s ability to provide universal service.³⁵ The use of primary lines and either embedded or forward looking cost could be inconsistent with section 254 goals if used as a basis for determining support in a federal support mechanism. If primary lines and total costs were utilized to determine unit costs, then support received by an eligible carrier would be equal to the total cost when unit costs are multiplied by the number primary lines to determine a carrier’s support. If total lines and total costs were to be used to determine unit costs and support was determined by the product of primary lines reported and unit cost then support would be reduced by the ratio of primary lines to total lines for that carrier. In the latter case, support

³⁵ See Notice at para. 28.

would not meet the 254(b) (5) requirement for sufficiency,³⁶ because the support provided would not be sufficient to build and maintain a network to supply the total demand at a level and rate that is comparable to service provided in urban areas.

The Joint Board asks if support were limited to single connection, how would it be determined which line receives support? Would it be administratively feasible to distinguish primary from second lines?³⁷ The Joint Board also asks if support were limited to a single connection, should the end user designate the line to be supported, and if so, how should this rule be administered?³⁸ Notwithstanding the economics of limiting support to primary lines, the issues associated with the determination and reporting of primary lines make the approach patently unfeasible. There is no characteristic or function that distinguishes a primary line from a non-primary line. A CMRS subscription or a wireline subscription could be a primary line. Thus, in order to be competitively neutral the determination of a primary line must lie in the hands of the end-users. The suppliers in the rural market would likely be forced to initiate promotional campaigns, not to acquire a customer, but to acquire the customers' determination of primary line designation on existing service. The churn associated with this process would make support unpredictable³⁹ and the costs associated with such superfluous marketing activity would inflate the cost of providing universal service. Additional administrative costs would also be associated with tracking the churn and reporting primary line counts to USAC. Such a system would also invite a new form of rural "slamming", since it would be the number of reported primary lines that would determine the amount of support for which a carrier would qualify.

³⁶ 47 U.S.C. § 254 (b) (5) Specific and Predictable Support Mechanisms.-There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.

³⁷ See *Notice* at para. 29.

³⁸ *Id.* at para. 30.

³⁹ 47 U.S.C. § 254(b)(5).

The Joint Board inquires as to what extent any proposed modifications would affect the size of the fund.⁴⁰ The primary motivation for limiting support to primary lines appears to be the assumption that such a method could be used as a vehicle to limit the size of the fund in a competitive market situation. A primary line mechanism could be designed to limit support to one line and one carrier per customer even if more than one carrier is providing service to that customer. Utilizing this method as a means to limit fund size will not likely provide sufficient support to any of the competing carriers. In addition, such an approach could also result in an unintended outcome if a large number of customers are actually captured by competitive carriers. If an incumbent carrier actually loses customers and support levels continue to be based on the incumbent cost (embedded or forward looking) and current demand the amount of unit support actually increases. As the number of captured customers becomes large the fund size actually explodes. So an approach that is perceived to limit the fund size by basing the support on primary lines and captured customers actually will have the reverse effect.

V. Process for Designating ETCs

The Joint Board seeks specific comment on ETC designations performed by states pursuant to section 214(e)(2) of the Act.⁴¹ The issues that the Joint Board is seeking comment on with regard to ETC designation that are addressed by the Nebraska Companies herein include: should the Commission establish permissive federal guidelines for state to use in designating ETCs pursuant to section 214(e)(2); should the Commission provide guidance regarding the factors a state commission's public interest analysis should consider; and the extent to which

⁴⁰ See *Notice* at para. 32.

⁴¹ Id. at para. 34.

similar universal service obligations or quality of service obligations are not imposed on incumbent LECs and competitive ETCs.

The Commission should expand the definition of universal service to include a minimum level of service standards but still allow the states to determine the public interest.

The Joint Board asks if it is advisable to establish permissive federal guidelines for states to use in designating ETCs pursuant to section 214(e)(2), and if so, what should be included in such guidelines? In considering this issue, the Joint Board asks commenters to address the impact of the Fifth Circuit's decision regarding the Commission's ability to prohibit states from imposing additional eligibility criteria on ETCs.⁴² Except under conditions as described in section 214(e)(6), State commissions are given the explicit responsibility to designate a common carrier that meets the requirements contained in 254(e)(1) as an ETC for a service area designated by a State commission. In the case of an area served by a rural telephone company, the State commission must find that such a designation is in the public interest in order to make such a designation.⁴³ In the Texas PUC Fifth Circuit Case, the Court addressed the Commission's ability to limit the criteria that State commissions may consider when assessing a carrier's eligibility for receiving federal universal service support.⁴⁴ The Court reversed that portion of the Commission Order prohibiting the states from imposing any additional requirements when designating carriers as eligible for federal universal service support.⁴⁵ These

⁴² Ibid.

⁴³ 47 U.S.C § 214(e)(2) Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission so long as each additional requesting carrier meets the requirements of paragraph (1).

⁴⁴ See *Texas Office of Public Utility Council v. FCC* 183F.3d 393, 418 (5th Cir. 1999) ("Texas PUC Case").

⁴⁵ See *Texas PUC Case* §2.a. Limiting the Criteria that State Commission May Consider When Assessing a Carrier's Eligibility, pg. 11 "Thus the FCC erred in prohibiting the state from imposing additional eligibility requirements on carriers otherwise eligible to receive federal universal service support. The plain language of the statute speaks to the question of how many carriers a state commission may designate, but nothing in the subsection prohibits the

requirements must be found to be consistent with the public interest as described in 214(e)(2).

Thus, it would not be advisable for the Commission to establish permissive guidelines for states in the designation of ETCs for such guidelines would impinge on the lawful rights of the State commissions to make such determinations.

The Joint Board also seeks comments on the public interest finding that must be made before any competitive carrier can be designated as an ETC in a rural telephone company's study area⁴⁶. If greater consistency among states in performing the public interest determination is desirable, the Joint Board asks if the Commission should provide guidance to state commissions regarding the factors a state commission's public interest analysis should consider. As explained above, because states have the right to establish their own criteria, in addition to federal criteria, to consider when assessing a carrier's eligibility for receiving federal universal service support, the Nebraska Companies believe that the Commission should not provide guidance regarding the factors a state commission's public interest analysis should consider. While the Commission may seek to provide greater consistency among states in performing public interest determinations, the Nebraska Companies believe that an attempt to provide consistency by providing guidance regarding the factors a state commission's public interest analysis should consider would be inconsistent with the Fifth Circuit decision allowing states to establish their own criteria when assessing a carrier's eligibility for receiving universal service support.

The Joint Board inquires as to what extent are similar universal service obligations or quality of service obligations not imposed on incumbent LECs and competitive ETCs?⁴⁷ The

states from imposing their own eligibility requirements. This reading makes sense in light of the states' historical role in ensuring service quality standards for local service. Therefore, we reverse that portion of the Order prohibiting the state from imposing any additional requirements when designating carriers as eligible for federal universal service support."

⁴⁶ See Notice at para. 34.

⁴⁷ Ibid.

Nebraska Companies suggest that the Joint Board and the Commission can provide direction to the State commissions through the use of authority granted under section 254(a) and 254(c) to define the services that are supported by the Federal universal service mechanism. Under section 254(c)(2) the Joint Board may recommend that the Commission alter or modify the definition of supported services. The Nebraska Companies recommend that through the use of this authority, the Joint Board should establish a minimum set of quality of service standards that are required attributes of the defined supported services. This approach is consistent with the authority granted to the Commission in section 254(a) and 254(c) and insures that the principle advanced in section 254(b)(1), that “*quality services* should be available at just, reasonable and affordable rates” is fulfilled. (emphasis added)

The Nebraska Companies recommend that the Joint Board consider that the minimum quality of service standards should be focused on network availability requirements and equal access. Network availability requirements are necessary to serve public safety and national security interests while an equal access requirement for all ETCs ensures the rights of customers to access their choice of long distance carrier.

ETC designation should expire if carriers do not periodically demonstrate that support is being utilized for the provision, maintenance, and upgrading of facilities for which the support is intended, and that the carrier is achieving the defined public interest goals.

Section 254(e) requires that a carrier that receives support shall use that support only for the provision, maintenance, and upgrading of facilities and service for which the support was intended. Section 254(c) and 214(e)(2) define the “intention of support” by describing both the nature (definition) of the service to be supported and the process by which a competitive service area is to be designated for multiple carriers. To comply with the statutory requirements, a carrier must therefore demonstrate that support dollars are actually being applied to the

provision, maintenance, and upgrading of facilities and service that are supported services under 254(c) and that such facilities and services are being provided in the areas as defined in the 214(e) (2) process. Currently, the Commission requires states that wish to receive federal universal service high cost support for rural carriers within their boundaries must file a certification with the Commission and USAC stating that all federal high cost support flowing to rural carriers in that state will be used in a manner consistent with section 254(e).⁴⁸ The Nebraska Companies suggest that the Commission establish stronger rules that apply to the obligation of state commissions that would require a periodic review of each ETC's compliance with evolving supported service definitions and the required service area obligations. If after a show cause proceeding compliance is not verified, not only will support be eliminated but ETC status will expire. This would also provide a periodic opportunity for State commissions to review compliance with their own public interest standards applicable to ETC status designation.

The Nebraska Companies have also recommended that the public interest determination be re-focused to assure the achievement of defined public goals, such as wireline ubiquity, wireless ubiquity and the delivery of broadband services to rural areas. One of the reasons that it is important to define the specific goals and objectives that the support is designed to achieve is to provide a means to measure and track the achievement of those goals so that the state Commission can certify that the funds are being used for purposes "for which the support is intended". For example, if the support provided to a wireless carrier is intended to construct and maintain towers in areas which currently do not have wireless coverage, then it would be a simple and straight-forward process to track the progress regarding the construction and maintenance of such towers. Currently, the goal generally expressed in the grant of ETC

⁴⁸ 47 U.S.C. § 254(e) A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support should be intended.

petitions is “competition”. This goal is particularly difficult to track because in many cases the wireless carrier is already competing with the incumbent carrier in the more densely populated portions of the study area. By tying support to defined public goals it will be much easier to measure and track the achievement of those goals, and to assure that the public’s money is being spent wisely.

Section 332 of federal law does not apply when wireless carriers elect to become ETCs

The Nebraska Companies have suggested that the Joint Board should not recommend to the Commission that they should impinge on the lawful obligations of the State commissions to designate ETC status. Further, the Nebraska Companies assert that section 332⁴⁹ does not impose limitations on State commissions with respect to regulation of wireless carriers when ETC status is an elected condition by such carriers. A State commission is free to exercise any applicable rule as a condition for ETC status determination as long those regulations are not inconsistent with the Commission rules to preserve and advance universal service.⁵⁰ The Utah Supreme Court upheld a Utah PSC ruling that asserted that ETC status is separate from common carrier status and that section 332(c)(3)(A) was not applicable when a common carrier is acting as an ETC⁵¹. The Nebraska Companies suggest that the Joint Board should recommend that the Commission verify these important rights of State commissions in the determination of ETC status. The Nebraska Companies recommend that verification of the right of state commissions to set conditions for receipt of universal service support that would otherwise be prohibited as a

⁴⁹ 47 U.S.C. § 332 (c)(3)(A) and (c)(8).

⁵⁰ 47 U.S.C. § 254(f) A state may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

⁵¹ *WWC Holding Co. Inc. V. Public Service Commission of Utah, et al.*, 44 P.3d 714,724 (Utah 2002).

requirement on CMRS carriers in general under Section 332 should be accomplished through a rulemaking proceeding, so that the Commission can issue rules clarifying this important issue.

VI. Conclusion

It is likely that if current trends continue, driven by wireless participation, federal funding requirements could grow by well over \$2 billion. This additional funding requirement could radically increase if the current intercarrier compensation mechanisms are replaced by a bill and keep paradigm being advocated by some special interests within the industry.

An examination of the facts indicates that CMRS service is not a substitute for wireline service. The inherent differences in wireline and wireless technology platforms drive significant differences in the function and characteristics in the product offerings. It appears that the current universal service policy as exercised by the Commission fails to recognize these fundamental differences. Instead, it appears to favor a market view where the carriers utilizing different technologies compete for not only the same customers in the provision of a generic service referred to as “universal service,” but also for the same pool of universal service funds.

The Nebraska Companies assert that the current Commission model will not provide for the robust and evolving service set or the level of service quality that the Act requires for rural markets. In fact, if the current policy is continued, support will eventually be diluted, resulting in unpredictability and disincentives for either incumbent wireline or wireless carriers to invest in rural markets. While the Nebraska Companies believe there will be no consumer benefit to the artificial institution of competing carriers in many rural markets, there may be benefit to the funding of complementary carriers in those markets. This should only happen if there are clear public policy goals that are well defined and are deemed to be in the public interest. The fund distribution mechanism for complementary carriers should reflect differences in the utility, cost

structure, and the level and quality of service delivered. CMRS network platforms provide for mobility but sacrifice the network availability and broadband capability that are inherent in the dedicated distribution links of wireline technology. Service benchmarks should be established by the Commission in order to provide a metric for the distribution structure. Services that are fully compliant would receive the maximum level of unit support while unit support would be discounted for those carriers that only partially attain those benchmark levels.

Support should be provided for network infrastructures and therefore for all lines that meet ETC designation criteria. Irrespective of the technology deployed, telecommunications networks are engineered to provide service to serving areas, not to a single subscription or a single customer. Only under this framework can the proper incentives to invest be constructed.

Threshold quality of service and functional standards should be set by the Commission through the expansion of supported services definitions, not by imposing minimum public interest standards on state commissions for the determination of ETC status. This approach properly balances the role of the states and the Commission and is consistent with the Act.

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Respectfully submitted,

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